

**REMARKS**

This Response responds to the Office Action dated January 6, 2010, in which the Examiner provisionally rejected claims 1-3, 5-8, 13-15, and 17-20 on the grounds of non-statutory obviousness-type double patenting; and objected to claims 4, 9-12, 16, and 21-24 as being dependent upon a rejected based claim but would be allowable if rewritten in independent form.

Claims 1-3, 5-8, 13-15, and 17-20 were provisionally rejected on the grounds of non-statutory obviousness-type double patenting over Co-pending Application Serial Number 10/520,433.

Applicants respectfully traverse the Examiner's provisional rejection of the claims. Applicants respectfully point out that an express abandonment of Co-pending Application Serial Number 10/520,433 has been filed on January 22, 2010. A Notice of Abandonment (copy attached) was mailed February 3, 2010. Applicants respectfully submit that the provisional rejection no longer applies. Applicants therefore respectfully request the Examiner withdraws the provisional rejection to claims 1-3, 5-8, 13-15, and 17-20.

Since objected to claims 4, 9-12, 16, and 21-24 depend from allowable claims, Applicants respectfully request the Examiner withdraws the objection thereto.

The prior art of record, which is not relied upon, is acknowledged. The references taken singularly or in combination should not anticipate or make obvious the claimed invention.

Thus it now appears that the application is in condition for a reconsideration and allowance. Reconsideration and allowance at an early date are respectfully requested. Should the Examiner find that the application is not now in condition for allowance, Applicants respectfully request the Examiner enters this amendment for purposes of appeal.

**CONCLUSION**

If for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is requested to contact, by telephone, the Applicants' undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this case.

In the event that this paper is not timely filed within the currently set shortened statutory period, Applicants respectfully petition for an appropriate extension of time. The fees for such extension of time may be charged to Deposit Account No. 50-0320.

In the event that any additional fees are due with this paper, please charge our Deposit Account No. 50-0320.

Respectfully submitted,

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Attorneys for Applicants

Date: March 3, 2010

By: 

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,433	09/21/2005	Takuji Himeno	450100-04676	9864
7590 William S Frommer Frommer Lawrence & Haug 745 Fifth Avenue New York, NY 10151				
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EXAMINER				
ATALA, JAMIE JO				
ART UNIT		PAPER NUMBER		
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02/03/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Notice of Abandonment**

Application No.

10/520,433

Examiner

Jamie Atala

Applicant(s)

HIMENO ET AL.

Art Unit

2621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☒ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

/BETTY POWELL/  
ODM

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.